

1 constituted 7.7 percent of this bill?

2 A Yes, whatever \$100 of, of \$1,300 represents.

3 Q And the only work on this August 7th bill that's
4 attributable to the low power CPs are the conferences that are
5 listed on this bill?

6 A Yeah, which were substantial and continually
7 extensive in the amount of the \$1,200 figure.

8 Q Now, were 50 percent of that work attributable to
9 the Red Lion application?

10 A Well, again, Mr. Schonman, I did not go through bill
11 by bill. I just did it on my aggregate amount but under my
12 theory, yes, 50 percent to 90 percent could have been
13 attributed to Red Lion.

14 Q 90 percent of those conferences could have been
15 about the Red Lion application?

16 A They were -- well --

17 JUDGE CHACHKIN: He didn't say about. He said
18 attributable.

19 WITNESS: Attributable under my theory, yes. I
20 mean, the conferences were going to take place whether it was
21 Red Lion, Red Lion and Lebanon, Red Lion, Lebanon and
22 Lancaster. The work was all the same. And all I'm saying was
23 that I thought it fair and reasonable and conservative to take
24 50 percent of the overall work and apportion it to Red Lion.

25 BY MR. SCHONMAN:

1 Q 50 percent instead of 60, instead of 70, 80, 90?

2 A Yeah. I was being conservative and I didn't need to
3 go higher to reach the level of reimbursement that was being
4 talked about.

5 Q I understand. Let's move on to page 22 which is
6 your firm's November 9, 1990 bill to Raystay, and as I
7 understand your calculations which are reflected on page 15,
8 50 percent of this bill was attributable to the low power
9 applications?

10 A That's correct.

11 Q Which items on this bill, the November 9, 1990 bill,
12 are attributable to the low power applications?

13 A Well, as I believe I indicated earlier, I didn't go
14 through and parse it out, that particularly. This was the
15 completion of the establishment of the compliance program and
16 its initial implementation, so I viewed that it had an aspect
17 of fulfilling the pledge that we had made to the Commission
18 and completing the compliance program that had been
19 established and, secondly, that establishment of the
20 compliance program and training of the personnel at TV 40 and
21 getting them acclimated to such a program and working with
22 them on it also had a -- was the prototype for use of such a
23 program when the permits were built. So in my view it had an
24 advocacy or completion of the application process component.
25 It had a step reasonably necessary to put the CPs into

1 operation component, and obviously it also had some component
2 of applying to the existing station, TV 40, so I thought it
3 was fair to take half of that for the construction permits.

4 Q Now, there are four items here. Am I correct that
5 all four of them are attributable to the low power
6 applications?

7 A Well, I don't -- the last item, I think, was the
8 certification which I assume applied to TV 40 but, again, I
9 took the entire process and, and took half of it. But
10 certainly -- and I guess to the, to the extent that
11 familiarity with the station people, with the certification,
12 the preparation of the certification, was the prototype for
13 how we'd do it when we had the low power and certainly a
14 component of that was related to the low power, each item on
15 there.

16 Q So your answer is yes, all four?

17 A Yes, a component of them was, yes.

18 Q All right. How did you arrive at 50 percent being
19 attributable to low power applications as opposed to any other
20 facilities that Raystay owned?

21 A Well, the compliance program related only to the low
22 power and they had one existing station and they had five
23 permits and the compliance program was going to apply to both
24 equally, so it seemed to me 50 percent was a fair way to carve
25 it up as between the permits and the existing station.

1 Q Could it have been 60 percent?

2 A Well, I guess it could have been anything, but I
3 just thought 50 percent was a, was a fair and reasonable way
4 to do it.

5 Q And 50 percent of that is attributable to the Red
6 Lion applications?

7 A On the theory that I've already expounded several
8 times, yes.

9 Q We can move on to page 23 which is a bill dated May
10 6, 1991 from your firm, and as I understand it from your
11 calculations on page 15 43.3 percent of this bill, of the fees
12 on this bill, is attributable to the low power applications?

13 A That's correct.

14 Q Now, there are three items listed on the May 6, 1991
15 bill. Were all three attributable to the low power
16 applications?

17 A No. The first two are related to some -- well, one
18 related to a one paragraph letter on a car's license and the
19 other was a filing of a business radio. Those were not low
20 power. It was -- the primary component of this bill was the
21 review of the low power agreements, discussion with Mr.
22 Sandifer and the letter of April 24, 1991, the last item.

23 Q How did you figure out that the work that was
24 performed on that last item constituted 43.3 percent of that
25 \$750 charge?

1 A Well, the way, the way I did it is I had time
2 sheets, I think, for at least one of the two top items and I
3 looked up what they were and they amounted -- they were short
4 items that took about 15 minutes each, so they were like \$50
5 each or \$100, so the last item in the aggregate was \$650. I'd
6 also worked on this one and I prepared this bill. And this
7 \$650 item consisted of, of reviewing some agreements that
8 Raystay was considering on their low power station, TB 40, as
9 well as the agreement also would apply and did apply to the
10 five CPS. So I had -- and we reviewed those and there was
11 discussions and we wrote a letter trying to tighten up some of
12 the language in there, and the legal work relating to the low
13 power in general on this bill was \$650 and since part of it
14 applied to TV 40 and part of it applied to the permits, I only
15 -- I took half of it or \$325 for the permits.

16 MR. SCHONMAN: Your Honor, can we go off the record
17 for just a moment?

18 JUDGE CHACHKIN: Yes. We'll go off the record.

19 (Off the record. Back on the record.)

20 BY MR. SCHONMAN:

21 Q So if I understand your testimony correctly, \$325 of
22 this \$750 amount is attributable to the -- all of the low
23 power applications?

24 A To the permits. They were permits.

25 Q Oh, the permits.

1 A Correct.

2 Q And of that was 50 percent attributable to the Red
3 Lion permit?

4 A Yeah. The work that we did and the revision on the,
5 on the agreements as they applied to the permits were
6 identical so it falls within my same theory where it could
7 have been anywhere from 50 percent to 90 percent.

8 Q We can move on to page 24 of your direct testimony,
9 Mr. Berfield, and that's a bill dated June 5, 1991, and
10 according to your calculations on page 15 of your testimony
11 33.3 percent of that bill is attributable to the low power
12 CPs? Am I correct?

13 A That's correct.

14 Q How did you arrive at that amount, 33.3 percent?

15 A Well, the, the first item on there was a cable
16 matter, review and filing of the cable reports, and I
17 determined that that was \$100, and the lower, the lower item,
18 the final review of the low power agreements, discussion with
19 Mr. Sandifer and the letter of May 25 -- May 29th, those were
20 the construction -- low power construction permit items and
21 that was \$300. And since -- just as before, since the low
22 power agreements applied both to TV 40 and to permit, of the
23 \$300 I took half for the permits, \$150.

24 Q Why did you take half? Why didn't you take
25 something more or something less?

1 A Well, I thought that was a fair apportionment of the
2 work because we had, we had reviewed the agreements. There
3 were similarities in the agreements between TV 40 and the
4 permits and I just thought 50 percent was a fair allocation.

5 Q So you grouped the permits together and that was
6 half the work that was performed and the other half was for TB
7 40?

8 A Yes.

9 Q And after you grouped the permits together half of
10 that was all attributable to the Red Lion?

11 A Well, as I explained to you, I didn't go back to the
12 other bills when it came to making the Red Lion allocation,
13 but under my theory a minimum of 50 percent and up to a higher
14 percent would have been attributable to Red Lion. All the
15 construction permit agreements were identical.

16 Q So it could have been up to 90 percent attributable
17 to Red Lion?

18 A I think it could have been, yeah.

19 Q Could it have been 95?

20 A Well, I didn't -- it could have been perhaps. I
21 didn't really parse it that carefully. I'm just trying to
22 point out, Mr. Schonman, that when I put a 50 percent overall
23 allocation I -- in my own mind I was being conservative.
24 That's all I'm trying to point out.

25 Q I understand. Let's move on to page 25 which is a

1 | bill dated November 5, 1991, and according to your
2 | calculations on page 15 of your direct testimony 60.7 percent
3 | of the fees were attributable to the low power CPs?

4 | A That's correct.

5 | Q How did you come up with that number?

6 | A Well, the only item on here that I attributed to the
7 | permits, and this is one that did, in addition to other
8 | things, specifically reference Red Lion, was that \$425. I did
9 | not include the earlier two items. I just included the \$425
10 | as obviously relating to the permits.

11 | Q The first one did not relate to the permits at all?

12 | A I think at that point I thought it was more of a TV
13 | 40 matter so I didn't include it.

14 | Q And what's the second item all about, "Discussions
15 | re: status of Quality Family companies?"

16 | A I think that was some -- that was the party, I
17 | believe I'm correct, with whom Raystay had entered into the
18 | low power agreements, the local marketing agreements, and I
19 | think it had not turned out well for Raystay and I think there
20 | was some discussion as to if there was anything maybe on file
21 | with the Commission regarding Quality Family companies. I
22 | think maybe John Schauble did a little work on that. But I
23 | did not include it as CP work.

24 | (TAPE 6)

25 | JUDGE CHACHKIN: Do you want to add what you just

1 | said there?

2 | WITNESS: I just said I probably could have included
3 | part of the \$75 but I didn't. I just included the \$425.

4 | JUDGE CHACHKIN: Couldn't you have included all of
5 | it, all of the \$75?

6 | WITNESS: Well, no, because I think that the
7 | relationship with Quality Family applied to TV 40 as well as
8 | the permits.

9 | BY MR. SCHONMAN:

10 | Q So you could have included a portion of the \$75 but
11 | you didn't?

12 | A That's correct.

13 | Q And why didn't you do that?

14 | A Well, I might have overlooked it. I might have felt
15 | that it was more related to TV 40 than it was to the permits.
16 | I just -- for whatever reason I just picked up this last item
17 | there.

18 | Q Now, the \$425 figure that's listed here on page 25,
19 | that is attributable to the low power construction permits?

20 | A Yes.

21 | Q In its entirety?

22 | A Yes.

23 | Q And of that 50 percent is attributable to the Red
24 | Lion construction permit? Is that correct?

25 | A Well, I think 50 percent -- I think certainly higher

1 | because a major component of this assignment -- this item was
2 | obtaining a modification application that a prospective buyer
3 | for Red Lion had filed and analyzing that and having
4 | discussions, so certainly on this item a much higher
5 | percentage than 50 percent could have been attributed to Red
6 | Lion.

7 | Q How much higher?

8 | A I'd take 90 percent.

9 | Q Could it be 95?

10 | A Well, I didn't really parse it that, that carefully.
11 | I mean, if you recall, I was just going through in November
12 | and writing up all the low power bills and then I applied the
13 | 50 percent and I did not go back through and say well, this
14 | one ought to be 53 and this ought to be 67 and this ought to
15 | be 83. I just -- but certainly on this one, as on all the
16 | others, it could have been much higher than 50, yeah.

17 | Q Mr. Berfield, on this \$425 figure what services did
18 | you firm render, if any, regarding the preparation and
19 | prosecution of the Red Lion application or expenses reasonably
20 | related to getting the Red Lion application -- getting the Red
21 | Lion station constructed?

22 | A Well, the modification application. In other words,
23 | a proposed buyer for Red Lion had filed a modification
24 | application and we, we obtained the application. We have
25 | analyzed the application. And we did that and then two or

1 three weeks later the Commission granted the application
2 unexplicably because there had been no -- it's supposed to be
3 when a prospective -- files an application there's supposed to
4 be a certification from the seller consenting it, and there
5 didn't -- there was no such certification in the application,
6 so theoretically the Commission should not have granted that
7 Red Lion modification application. But, lo and behold, the
8 Commission went ahead and granted the application and so we
9 had to deal with the circumstances where we had outstanding
10 Red Lion permit, I think, for one channel at one location and
11 the Commission had modified it to a different channel at a
12 different location and our client wanted some advice as to --
13 because it's kind of an unusual situation, so we had to --
14 this was all definitely related to the Red Lion permit and if
15 we decided to go forward -- in other words, what was the
16 impact of this grant of the modification on your permit? It
17 was an unusual situation and -- but it certainly was related
18 to the implementation of the Red Lion permit.

19 Q Were any of the services that were -- that are
20 reflected on the November 5, 1991 bill, did any of those
21 services relate to the company's efforts to place the station
22 on the air?

23 A Yes. The modification certainly. In other words,
24 steps reasonable and necessary to place it on the air. If you
25 have a permit that says you're going to built it in Spot A on

1 channel 23 and you get a -- we find out that the Commission
2 had modified it to Spot B on a different channel, maybe I've
3 got my channels reversed, on a different channel, obviously
4 that impacts your ability to go on and how you -- how you've
5 done it. If we had not sold the Red Lion permit and decided
6 to build it I guess we'd have had to have gone back and sought
7 reconsideration from the Commission.

8 JUDGE CHACHKIN: We'll take a ten minute recess.

9 (Off the record at 2:50 p.m. Back on the record at
10 3:03 p.m.)

11 JUDGE CHACHKIN: Back on the record.

12 BY MR. SCHONMAN:

13 Q Mr. Berfield -- thank you, Your Honor. Mr.
14 Berfield, I just have another question or two on page 25 of
15 your direct testimony. That's the November 5, 1991 bill.

16 A Yes, sir.

17 Q The third matter for which you billed Raystay,
18 "Discussions re: low power construction permits," it says in
19 parenthesis (extension and/or assignment). What amount of the
20 work that was performed, for which you billed Raystay \$425,
21 what amount was attributable to matters relating to the sale
22 or proposed sale of the Red Lion construction permit?

23 A I don't remember a specific amount, but it was, it
24 was a very minor part. A major part of it was the Red Lion
25 application and the implications relating to it. I think in

1 the course of that I just had a general discussion with Mr.
2 Sandifer at Raystay about the extension times were coming up
3 and the assignment procedure, but that was just in a few
4 minutes. The bulk of it was that Red Lion application matter.

5 Q Is it fair to say, though, that some of that \$425
6 was related to work performed involving the sale or
7 contemplated sale of the Red Lion CP?

8 A Well, it might have been \$50 at the most.

9 Q Would you consider that amount to be reimbursable
10 expenses?

11 A I'm not sure. I'm not sure. I haven't researched
12 that recently.

13 Q Let's move on to page 26 of your direct testimony
14 and that's a certification of expenses. Now, as I understand
15 it, and please correct me if I'm wrong, you provided David
16 Gardner with the figure of \$2,425 attributable to Robert
17 Hoover engineering fees?

18 A Yes. I gave Mr. Gardner those, those three figures
19 there.

20 Q All right. Well, let's focus on Mr. Hoover's fees.
21 How did you come to give that figure of \$2,425 to David
22 Gardner?

23 A Well, he had told me what Mr. Hoover's engineering
24 fees were. It was the \$72-something figure. I forget which.
25 And I took one-third of that and came out with \$2,425.

1 Q Other than that figure of \$7,000+ dollars, did you
2 have any information before you about how that figure may have
3 been broken down by Mr. Hoover?

4 A Well, I had all of Hoover's work, all his original
5 site frequency work which was done by site. I had all his
6 applications. I had all the Red Lion FAA, EMI correspondence
7 and I had a recollection that there certainly had been a fixed
8 fee for the initial work per site. And that was the
9 information I had before you. I didn't have any bill of Mr.
10 Hoover before me, no.

11 Q You had the results of Mr. Hoover's work? Is that
12 correct?

13 A That's correct.

14 Q You had the, the maps that he created and graphs and
15 compilations --

16 A I had a substantial amount of his work as reflected
17 in our exhibits in the application, yeah.

18 Q But you had no bills from Mr. Hoover?

19 A I didn't have any Hoover invoices, no. I just had a
20 figure from Mr. Gardner of what Mr. Hoover's engineering added
21 up to.

22 Q So you knew that Mr. Hoover had provided engineering
23 services in an amount of \$7,000+ dollars?

24 A Yes.

25 Q And then you took one-third of that to arrive at

1 | this \$2,425 number?

2 | A Yes.

3 | Q How is it that you came upon the figure of one-
4 | third?

5 | A Well, as I indicated, when we started out on the
6 | project I knew Mr. Hoover had given a fee for each specific
7 | site search, Red Lion, Lancaster and Lebanon, and the three
8 | that weren't filed on. And I reviewed his work and it
9 | appeared to me that one-third of the work was attributable to
10 | Red Lion, one-third to Lebanon, one-third to Lancaster, and
11 | that -- that's how I did it, but I did not have Mr. Hoover's
12 | bill before me when I did that. I just had the number from
13 | Mr. Gardner.

14 | Q You said that you knew that Mr. Hoover had given a
15 | figure early on?

16 | A Yes.

17 | Q What do you mean -- what is that all about?

18 | A Well, when we first started I -- it's my
19 | recollection as I got a call back in the fall of '88, maybe
20 | November, early November 1988, from Mr. Gardner asking how
21 | Raystay could go about possibly applying for low power. At
22 | that time, as you know, low power only -- you could only file
23 | in certain windows and the Commission's only opens like one or
24 | possibly two windows each year. But when he called there
25 | wasn't a window open, but I think we knew that one would be

1 coming open the first of the year, sometime in the first
2 quarter, which is what the Commission normally does. They
3 like to get their backlog caught up and then they open a new
4 window. And Mr. Gardner asked how we go about it and I said
5 I'll get ahold of Hoover and find out and I talked to Mr.
6 Hoover and he said yeah, it will be X dollars, and now it
7 turns out it was \$1,000 a site, to find out if your low power
8 channel was available at various, at various locations. So
9 that's how I knew that. I interfaced a little bit between
10 Hoover and Gardner on that.

11 Q Let's go back to your conversation with Mr. Hoover
12 early on in 1988, you said?

13 A I believe it was.

14 Q What is it that Mr. Hoover told you to the best of
15 your recollection about what the charges would be for his
16 services, how he would break those charges down and what those
17 services would include?

18 A Well, at that point all we were doing was seeing if
19 there were channels available. There's a frequency search,
20 which in low power you do by site, and Mr. Hoover said he
21 would research the sites for X dollars, which we now know was
22 \$1,000 a site, and that Mr. Gardner could tell him if he had
23 specific sites in mind. That's about it. I knew what had to
24 be done. I just -- but, I mean, that was about all I can
25 recall of the conversation.

1 Q Did he, did he convey to you how much he thought it
2 would cost for him to actually prepare the engineering portion
3 of each CP application?

4 A No. We never got into that.

5 Q You didn't get that far?

6 A No.

7 Q So, in other words, your conversation with Mr.
8 Hoover in 1988 related to just the frequency searches and the
9 cost for that?

10 A Yes. That's my recollection. And we didn't know if
11 we'd find any frequencies.

12 Q Okay. Let's move to a date more recently when you
13 had your conversation with David Gardner and David Gardner
14 gave you the figure of \$7,000+ dollars as the amount that Mr.
15 Hoover had charged Raystay for his engineering services. My
16 question for you is what was your understanding as to what the
17 \$7,000+ figure included?

18 A I -- to the best of my recollection I think it
19 included all the engineering to date.

20 Q What does that mean, Mr. Berfield?

21 A Well, that would mean the, the engineering work he'd
22 done in the site -- the original site searches plus the
23 preparation and filing of the applications, the notifications
24 to the FAA and the subsequent FAA work that was involved
25 relating to the EMI problem at the Red Lion site. I thought

1 the figure was an aggregate figure.

2 Q What does that mean?

3 A Encompassing the services of Mr. Hoover I've just
4 described.

5 Q So it was your understanding that that 7,000+ dollar
6 figure included all the work that Mr. Hoover had performed
7 relating to the five low power applications plus the, the work
8 done for locating the six sites?

9 A No. I think just the -- well, I think just the
10 three sites. I believe that's all. I wasn't -- I knew that
11 there had been site work done and I knew there, of course, had
12 been applications prepared and I knew there was an EMI problem
13 and I just thought that was the amount for the CPs.

14 Q Now, you had no, no bills before you when you
15 provided Mr. Gardner with the \$2,425 figure. Did you make any
16 efforts to call or contact in any way Mr. Hoover concerning
17 the total amount of his services?

18 A I don't think I did.

19 Q Did you ask David Gardner or anyone else connected
20 with Raystay or Raystay's companies about Mr. Hoover's bills?

21 A Well, when Mr. Gardner first called up and said he
22 wanted me to recap the expenses, the aggregate project that
23 led to the November 7th letter, I said well, I've got the
24 legal stuff and I know the filing fees, but you'll have to
25 give me Mr. Hoover's bills and -- or Mr. Hoover's -- I don't

1 mean the bills. You have to give me Mr. Hoover's number and
2 the -- also Greg Daly number, and Mr. Gardner gave me those
3 numbers.

4 Q So you created the November 7, 1991 letter where you
5 included the figure \$7,275?

6 A Yes.

7 Q And then when it came time to provide David Gardner
8 with the expenses which are contained on page 26 of your
9 testimony you merely took one-third of that?

10 A That's right.

11 Q Could it have been one-half perhaps instead of one-
12 third?

13 A No, because I -- my theory was that there were three
14 sites and one-third was the appropriate apportionment or
15 allocation.

16 Q Now, why did you happen to pick the number of sites
17 rather than the number of applications as a basis for
18 determining how to allocate the expenses?

19 A Because the initial work was done on a site basis.
20 The FAA work was done on a site basis. The application work
21 was done on a site basis. For the Lebanon and Lancaster
22 applications much of the engineering was the same for both.
23 They used the same site and much of the background work and so
24 forth would have been the same for both, and I just viewed it
25 as -- and then, of course, we had -- on the other end we had a

1 heavy -- it looked like a substantial amount of work on Red
2 Lion following the filing on the FAA and I just thought adding
3 it all -- looking at it all the one-third, one-third, one-
4 third was a fair and reasonable apportionment.

5 Q Have you had occasion to see Mr. Hoover's bills?

6 A You mean as of now?

7 Q Yes.

8 A Well, yes.

9 Q And were his bills based on a site basis or on an
10 application basis?

11 A Well, his initial, his initial -- I don't know if
12 you'd call it billing, but his initial retainer was on a site
13 basis, \$1,000 per site. Yes, that was on a site basis.

14 Q That's his initial retainer. How about his bills?

15 A Well, that was --

16 Q Was that on a site basis or on an, on an application
17 basis?

18 A Well, he gave, he gave a total number, as I recall,
19 of like \$7,500 and then he had kind of a breakdown. He said
20 \$1,500 per application and then I think he applied a 10
21 percent discount and got it down to \$1,350. His bill is in
22 the record.

23 Q And that's on an application basis, isn't it?

24 A Well, certainly the -- it is to some degree, yeah.
25 There is an aggregate number there but it's also broken down,

1 yes.

2 Q Can you turn to page 7 of your direct testimony,
3 specifically paragraph 14? And more specifically than that
4 I'd like to direct your attention to the sentence which
5 begins, "My rationale for doing so," to the end of that
6 paragraph.

7 A I'm sorry. What page are we on?

8 Q Page 7.

9 A Yes.

10 Q Paragraph 14.

11 A Yes. I see where you mean, yes.

12 Q "My rationale for doing so."

13 A I have that.

14 Q You've read that?

15 A Yeah.

16 Q You'll have to help me along with this. I'm having
17 trouble understanding what it is you're saying here. Can you,
18 can you explain what you mean by this sentence?

19 A Well, I was trying to explain my rationale for the
20 50 percent and it was based on the identity of the work done,
21 the legal work, done for -- in getting the applications
22 granted and their implementation. And I was trying to point
23 out that in my judgment, in my opinion, since the work --
24 virtually all the work would have been done whether we had one
25 application or five applications. That's certainly true the

1 way the application was prepared. It was also true of the
2 amendments, the good character showing and all the other
3 phases that, as I pointed out earlier, that if we'd have had
4 just one application we'd have had almost as much legal fees
5 as we did for five because the work had to be done to get one
6 granted as well as five granted, and that's what I was trying
7 to point out. In view of that. I thought taking just 50
8 percent for the Red Lion was conservative.

9 Q Could you have taken 50 percent for one of the other
10 low power CPs?

11 A I think I could have under my theory, but that
12 wasn't, that wasn't before me and plus I remembered how I had
13 prepared Red Lion first -- initially, but that really wasn't
14 before me. But certainly with respect to the, the balance of
15 the work, yes, I think that's true.

16 Q If one of the Lebanon CPs had been the first CP
17 among the five to be sold, would you have attributed 50
18 percent of the total expenses to that CP?

19 A You mean under my theory or -- yeah, I think I could
20 have, sure.

21 JUDGE CHACHKIN: Are you saying then that despite
22 the fact that you performed work initially for Red Lion if, in
23 fact, the Lebanon CP had been assigned, that you then would
24 have taken 50 percent for the Lebanon application,
25 notwithstanding the bulk of the work had been done for Red

1 Lion?

2 WITNESS: Well, let me put it this way. Certainly
3 on the front end, the first \$5,000, the bulk of it was Red
4 Lion, but after that they were all identical, so if you had
5 taken -- if you had said with -- say with the remaining
6 \$10,000 if you'd said you took a figure say of just 70 percent
7 and then you only took a smaller proportion on the front end
8 of the \$5,200, it would have still ended up at the \$7,700
9 figure that we took. That's what I meant by that.

10 JUDGE CHACHKIN: So --

11 WITNESS: The Red Lion application happened to be on
12 the front end with top-heavy Red Lion. After that the
13 remaining \$10,000 or so was all virtually identical. So if
14 you had taken a higher percentage on that and averaged it out,
15 it would have been about the same, I think.

16 JUDGE CHACHKIN: So, in effect, you're telling me
17 that your allocation on page 15 is really something that was
18 done after the fact, that it has no relationship to your
19 actual theory -- your theory when you made this apportionment?

20 WITNESS: No, no. Well -- I'm sorry. What page are
21 we on, Your Honor?

22 JUDGE CHACHKIN: Page 15.

23 WITNESS: No. Well, all I did on page 15 was figure
24 out what the costs were for the five CPs in the aggregate.
25 There was no allocation question as among the permits. And

1 then the only allocation I did as among the permits came when
2 I had the request to -- for the -- give advice as to the
3 \$10,000, and that's when I gave the 50 percent allocation for
4 the legal fees. But, no, that was, that was done at the time
5 that I gave, I gave the information. But this page 14 is just
6 listing all the fees for the low power -- and the reason there
7 are some percentages here is that some of the bills not only
8 had low power, but some of the bills had some cable matters
9 and they had to be broken out.

10 JUDGE CHACHKIN: But I'm trying to understand.
11 Insofar as your justification is concerned, once you completed
12 the Red Lion application work then all the applications then
13 were to be treated the same because you didn't -- I mean, you
14 could have --

15 WITNESS: That's right. They were all essentially
16 the same. That's correct.

17 JUDGE CHACHKIN: So your justification really stems
18 from the fact that you did the Red Lion application first and
19 that was the, the centerpiece which you used to prepare the
20 other applications?

21 WITNESS: That's true as to the \$5,000 attributable
22 -- but, Your Honor, see when we got to all the amendment, like
23 when we had to make the good character showing for Mr. Gardner
24 and the compliance program, those were all virtually identical
25 and that could have been a higher percentage of that work.

1 The \$10,000 could have been applicable to any one of the
2 permits. That wasn't Red Lion specific, if that's what you
3 mean. You're correct, Your Honor. But I'm just saying it
4 would all average out.

5 JUDGE CHACHKIN: But it only averages out if you
6 give the lion's share of the initial cost to Red Lion?

7 WITNESS: Well, I guess if you took, if you took the
8 point of view that -- with respect to the remaining work, that
9 you could have used 80 percent or 90 percent figure. I
10 haven't gone through the math. I mean, this was -- I didn't
11 really have all these hypotheticals before me, Your Honor. I
12 mean, I had a very specific case of Red Lion. I knew how I
13 had prepared it. I knew about the other work. And I didn't
14 really go into all the -- and I really haven't to this date
15 gone through my mind all the hypotheticals because they
16 weren't -- they really weren't before me.

17 JUDGE CHACHKIN: Your client was interested whether
18 you could justify \$10,000 in expenses?

19 WITNESS: Pure and simple.

20 JUDGE CHACHKIN: And you, I gather, reviewed the --
21 his statements as to what work was performed and on that basis
22 told your -- reached the conclusion that you could justify the
23 legal expenses -- half of the legal expenses to Red Lion?

24 WITNESS: That's correct, Your Honor, absolutely
25 right.